

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASWAN SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74920

Agency No. A76-228-790

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Jaswan Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") order denying his motion to reopen deportation proceedings. We have

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The IJ did not abuse her discretion in declining to equitably toll the limitations period for filing a motion to reopen because the record does not demonstrate that Singh acted with due diligence in discovering his counsel was ineffective. *See Socop-Gonzales v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc); *Iturribarria*, 321 F.3d at 898 (noting that due diligence is required to trigger equitable tolling).

Because Singh's motion to reopen was untimely, we do not consider his ineffective assistance of counsel claim or whether the withdrawal of his asylum application was voluntary.

PETITION FOR REVIEW DENIED.